



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF
SHOW CAUSE NOTICES ISSUED TO**

EIGHT (8) CAMPUSES OF DAR E ARQAM SCHOOLS

M/s Dar e Arqam, I-8 Campus, Islamabad
M/s Dare Arqam School, I-10 Campus, Islamabad
M/s International Model Tarbiyah (Private) Limited, Islamabad
M/s Dare Arqam School, Khayaban e Sir Syed Campus, Rawalpindi
M/s Dare Arqam School, Hayat Abad Campus, Peshawar
M/s Dare Arqam School University Town Campus, Peshawar
M/s New Dar e Arqam School Systems, Canal Road, Peshawar
M/s Tarbiyah Schools International, Peshawar

FOR DECEPTIVE MARKETING PRACTICES

**ON COMPLAINT FILED BY
M/S DAR-E-ARQAM SCHOOLS/DAR-E-ARQAM FOUNDATION**

(F. NO: 281/DAR-E-ARQAM/CCP/OFT/17)

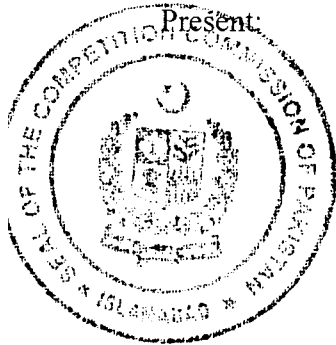
Date(s) of hearing: 13-03-2019, 03-04-2019
22-04-2019

Commission: Dr. Muhammad Saleem
Member

Dr. Shahzad Ansari
Member

M. Jaleel

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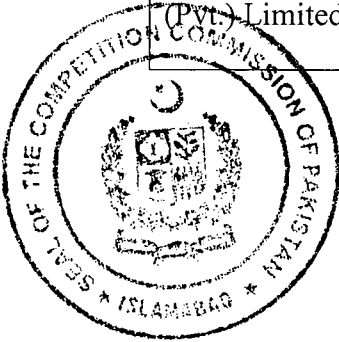
Mr. Noman A. Farooqi
Legal Advisor

Assisted by:
Ms. Sophia Khan
Joint Director (Legal)

Ms. Aish K.Khan
Management Executive

On behalf of:

M/s Dar-e-Arqam Schools/Dar-e-Arqam Foundation	Mr. Khurram Mehmood Qureshi Advocate Mr. Akhtar Bajwa, Director
Dar e Arqam, I-8 Campus	Mr. Farooq Sadiq Ms. Wasima Farooq Advocate Razzaq A. Mirza Fazal Faraz Sheikh, Advocate
Dar e Arqam, I-10 campus	
Dar e Arqam, Khayban e Sir Syed campus, Rawalpindi	
Dar e Arqam, Hayatabad Campus, Peshawar	
Dare Arqam School University Town Campus, Peshawar	
New Dar e Arqam School Systems, Canal Road, Peshawar	
Tarbiyah Schools International, Peshawar	
M/s International Model Tarbiyah (Pvt.) Limited, Islamabad	



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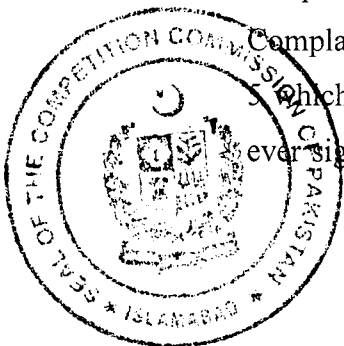
ORDER

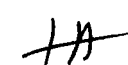
1. This Order shall disposed of the proceedings initiated by the Competition Commission of Pakistan (the ‘**Commission**’) *vide* Show Cause Notice Nos. 20 to 27 of 2019 dated December 20, 2018 (the ‘**SCNs**’), issued to M/s Dar e Arqam, I-8 Campus (**Respondent No. 1**), Islamabad, M/s Dare Arqam School, I-10 Campus, Islamabad (**Respondent No. 2**), M/s Dare Arqam School, Khayaban e Sir Syed Campus, Rawalpindi (**Respondent No. 3**), M/s Dare Arqam School, Hayat Abad Campus, Peshawar (**Respondent No. 4**), M/s Dare Arqam School University Town Campus, Peshawar (**Respondent No5**), M/s New Dar e Arqam School Systems, Canal Road, Peshawar (**Respondent No. 6**), M/s Tarbiyah Schools International, Peshawar (**Respondent No. 7**), M/s International Model Tarbiyah (Private) Limited, Islamabad (**Respondent No. 8**), and collectively (the ‘**Respondents**’) for, *prima facie*, contravention of Sections 10(2)(a), 10(2)(b) and 10(2)(d) read with Section 10(1) of the Competition Act, 2010 (the ‘**Act**’).
2. The SCNs was issued to the Respondents pursuant to the Enquiry Report dated 30-08-2018 (the ‘**Enquiry Report**’). The enquiry was conducted on the complaint received from M/s. Dar-e-Arqam Schools (Pvt) Limited/Dar-e-Arqam Foundation (the ‘**Complainant**’), alleging that the Respondents disseminated false and misleading information to consumers by fraudulently using Complainant’s trademark, trade name and other distinctive items which amounts to deceptive marketing practices under Section 10 of the Act.

FACTUAL BACKGROUND

A. COMPLAINT, ENQUIRY & SHOW CAUSE NOTICE:

3. The Complainant in its complaint stated that its business “Dar-e-Arqam School” is presently known as one of the best quality education service provider in Pakistan, for which the Complainant converted his partnership business into private limited company named as “Dar-e-Arqam Schools (Pvt.) Limited in year 2009. The Complainant initially entered into franchise agreements with the Respondent No. 1 to which were later expired or terminated by the Complainant and no agreement was ever signed with Respondent No. 6. Furthermore, the Respondent No. 7 started their



campuses with the name similar to the project name of the Complainant i.e. Tarbiyah which was brainchild of the Complainant and it was introduced in 2014 under Total Child Development Plan (TCDP). The use of Complainant's registered collective marks by the Respondents and deceptive use of Complainant's project name "Tarbiyah" by Respondent No. 7 & 8 without any due authorization, constitutes, prima facie, violation of Section 10(2)(d) of the Act. Moreover, acts of the Respondents are not only misleading the consumers about their services but are also capable of harming business interest of the Complainant, in violation of Section 10 (2)(a) & (b) of the Act.

4. The Enquiry Report after considering all the facts and material available on the record, concluded and recommended as follows:

"5.1 It is evident that the use of the Complainant's registered collective marks by the Respondents No. 1 to 8 and the deceptive use of the Complainant's project name i.e; Tarbiyah, by Respondents No. 7 & 8, is without any due authorization, thereby in violation of Section 10 (1), in terms of Section 10 (2) (d) of the Act. Moreover, it also appears that the act of the Respondents No. to 8 is not only misleading the consumers regarding their products but it is also capable of harming the business interest of the Complainant, in violation of Section 10 2 (a) & (b) of the Act.

5.2 The deceptive marketing practices have a direct impact on the public at large and therefore, it is in the interest of the general public and fair competition in the market that the undertakings should be stopped from marketing their products in an unfair and misleading manner and be encouraged to resort to marketing practices which are transparent and give consumers true and correct information.

5.3 Therefore, in light of the above mentioned findings, it is recommended that show cause notices may be issued to Respondents No. 1 to 8 for, prima facie, violation of Section 10(1), in terms of Section 10 2 (a)(b) & (d) of the



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5. Based on the above *prima facie* findings of the Enquiry Report, the Commission initiated proceedings under Section 30 of the Act against the Respondents. The relevant parts of the SCNs are reproduced hereunder:

4. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 2.12 to 2.25, it has been alleged that the Undertaking is involved in deceptive marketing practices by using Complainant's collective marks without any authorization and damaging the credibility of and reputation of the Complainant and is therefore highly likely to deceive and cause confusion in the minds of consumers; and*

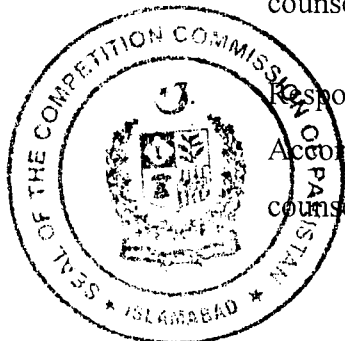
5. *WHEREAS, in terms of the Enquiry Report in general and paragraphs 4.9 to 4.15 in particular, it appears that the Undertaking copies the Complainant's registered collective marks in its campus without any authorization, which is in violation of Section 10 (1), in terms of Section 10(2)(d) of the Act; and*


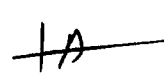
6. *WHEREAS, in terms of the Enquiry Report in general and paragraph 4.16 in particular, it appears that the Undertaking's conduct of infringing upon the rights of the Complainant's collective marks in its campus, the course books and fee schedule, without any authorization, is capable of harming the business interests of the Complainant, in prima facie violation of Section 10(1) in terms of Section 10(2) (a) & (b) of the Act; and*

B. WRITTEN REPLY AND ORAL REPRESENTATION AND HEARING:

6. The Respondents, vide SCN, were called upon to respond in writing within fourteen (15) days of the show cause notices to file the written reply and to avail the opportunity of hearing on 08th January 2019. Hearing was rescheduled for 13th March 2019. The Respondents requested for extension in time to file written reply and appointment of counsel to defend the case before the Bench.

Respondents filed written reply to the show cause notices on 20th March 2019. Accordingly the matter was again rescheduled for 03rd April 2019. The Respondent counsel requested for adjournment as he was recently appointed. Subsequently hearing

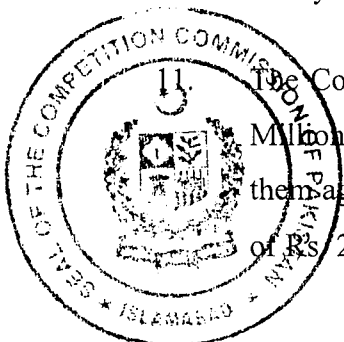



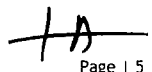
 

was scheduled for 22nd April 2019. No one appeared on behalf of Respondents despite service of hearing notice by the Registrar. Therefore, the Commission decided to proceed *ex-parte* against the Respondents on 22nd April 2019 in accordance with provision to sub-section (2) of Section 30 of the Act read with clause (e) of sub-regulation (2) of Regulation 26 of the in the matter pursuant to Regulation 26(2)(e) of Competition Commission (General Enforcement) Regulations, 2007. The Counsel appearing on behalf of the Complainant made detailed submissions with reference to the contents of the Complainant and the conclusions of the Enquiry Report and on the objections raised by the Respondents, after hearing the Complainant in detail, hearing in the matter was concluded.

8. The Respondents in their written reply have made several submissions. They have made the preliminary objections that, the instant matter is outside the scope of the Act and the grievance also falls within the scope of Section 56 of the Copyright Ordinance 1962. They have raised their concerns that the Complainant is not competent to file the Complaint and the Respondent has not committed any offence cognizable by the Commission. The Complaint is filed in vengeance only.
9. Mrs. Waseema Farooq has been associated with the school since 2006, she was head of the Dar-e-Arqam School, Westridge Rawalpindi. She was made head of the *Curriculum* Committee and all books and curriculum of the school were the brainchild of the Respondents.
10. Dar-e-Arqam School (Pvt.) limited was established and 40% profit goes to Dar-e-Arqam School Foundation and the remaining 60% goes to the investors. Two of the existing shareholders sold their shares and the Respondents bought shares worth of Rs. 730,000/- with extra payment of Rs. 200,000 /-. From the profit of the first branch four more branches were opened during the span of 03 years (2008-2011). The Respondents were and is a partner in all four branches. Furthermore, they also opened Khayaban-e-Sir Syed Branch, Rawalpindi as well.

11. The Complainant sold the Range Road Rawalpindi branch for Rs. 5,500,000/- (Five Million Five Hundred Thousand Only), without prior notice to the Respondents leaving them aggrieved. Upon protest the said branch was again purchased for a consideration of Rs. 22,500,000/- (Twenty Two Million Five Hundred Thousand Only) which were



paid in the form of adjustment of two years profit of Westridge Branch to the complainant. However, the profit during the time period 2014-2019 which came about Rs. 50,000,000/- (Fifty Million Only) approximately. Upon protest the Complainant lodged a bogus/fraud FIR against the Respondent and her husband, while both were arrested by the police. Resulting in defamation of the Respondent in their social circle, more or less, reflecting *mala fide* intention on part of the Complainant.

12. The Respondents have established the following branches of Dar-e-Arqam School :

- i. Dar-e-Arqam School Khayaban-e-Sir Syed
- ii. Dar-e-Arqam School I-8 Islamabad
- iii. Dar-e-Arqam School Abdara Road University Town, Peshawar
- iv. Dar-e-Arqam School Hayatabad Peshawar
- v. Dar-e-Arqam School I-10
- vi. Dar-e-Arqam School Gulbahar Branch Peshawar
- vii. Dar-e-Arqam School Gulberg Peshawar

13. The Respondents have played a major role in establishing the name of the school in Rawalpindi. The Complainant also illegally opened a branch within 1.7 kilometre violating the rules of Foundation. The said branch was transferred to the Respondents for Rs. 445,000/- (being 19% share in the Branch investment) for which an agreement was executed.

14. In 2015, the Respondent paid Rs. 3,300,000/- (Three Million Three Hundred Thousand Only) for the conversion of Dar-e-Arqam School Khayaban-e-Sir Syed Rawalpindi Foundation branch to Franchise Branch and became exclusive owner of said branch thus entitled to use the logo and seal of school till 2021.

15. The Respondents oppose the allegation of copying and using the name or logo of Dar-e-Arqam for purposes other than literary work. All allegations are false and notebooks and uniform with Dar-e-Arqam logo is available openly in the markets nationwide. The enquiry conducted is biased favouring and facilitating the ill-willed Complainants only. That material referred in the Enquiry Report is neither recovered from the Respondents nor was any proof provided for its printing by the Respondents. As far as the name M/s/ International Model Tarbiyah (Pvt.) Limited is concerned, it was registered with

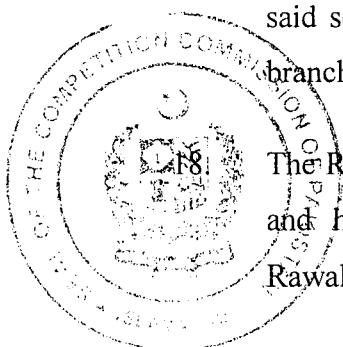


Securities and Exchange Commission of Pakistan (the 'SECP') with a registered trademark registered with the Registrar of Trademarks Karachi and is also given a tax number with regular tax payments made. Thus, the Respondent is entitled to use the said name and logo.

16. The Respondents have also raised this issue that Mr. Akhtar Bajwa Director Dar-e-Arqam School Islamabad and Gulberg Branch has violated his given affidavit as an Advocate that he would refrain from engaging in any business, thus his evidence is not acceptable as he is not allowed to conduct any business and has committed criminal offence. The Respondents have also raised the issue that there is dispute *vis-à-vis* the presence of the agreement and the obligations under the arbitration clause of the Agreement inter se the parties. It has been alleged by them that they have instituted a civil case wherein the Complainant has filed an application under Section 34 of the Arbitration Act, 1940 for stay of proceedings. The Respondents have alleged that the revocation of the agreement by the Complainant is arbitrary, illegal and unjustified by all means. Also while an application for arbitration is filed by Respondents, the instant Complainant is *mala fide* and liable to be dismissed. The Respondents have also filed a suit in Peshawar High Court wherein the Peshawar High Court has proceeded ex-parte against the Complainant.

17. The Complainant on the other hand has lodged FIR which has been dismissed by the Islamabad High Court, Islamabad; while a suit is pending at the Intellectual Property Tribunal. Lastly, the Respondents have purchased Dar-e-Arqam School I-10 Campus Islamabad through Agreement dated 25th August 2016 for a period of 5 years (further extendable), they have been running this school along with five other Franchises of Dar-e-Arqam School in Rawalpindi as well as in Peshawar. Dar-e-Arqam Foundation has opened another branch of the said School in Satellite Town, Rawalpindi in radius of 1.5 KM of Khayban-e-Sir Syed Campus owned by the Respondents, this according to the Respondents is a dispute in terms of the Agreements inter se the Parties, as the said school/branch could not be opened with the radius of 3 KM from the existing branch resulting in dispute.

The Respondents was the Partner in the Dar-e-Arqam School Westridge, Rawalpindi and has franchise of Dar-e-Arqam I-8, I-10, Islamabad, Khayaban-e-Sir Syed Rawalpindi, University Town Hayatabad, Gulberg and Gulbahar Campuses Peshawar.



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A handwritten signature in black ink, appearing to be 'JA'.

The shares, as per agreement of Westridge Branch and Range Road Campus is 35.1% and the total investment value of their shares is 50,000,000/- (Rupees Fifty Million Only) and Rs. 21,660,000/- (Rupees Twenty One Million, Six Hundred and Sixty Thousand Only) approximately. Respectively, the Respondents hold 26.2% shares in the satellite town Branch Rawalpindi. The Respondents have also been deprived of the profits since 2016 of approximately Rs. 11,100,400/- (Rupees Eleven Million One Hundred Thousand and Four Hundred Only) their queries regarding partnership as well as franchise agreements have been met with unlawful and arbitrary termination of the agreement by the Franchise Agreements.

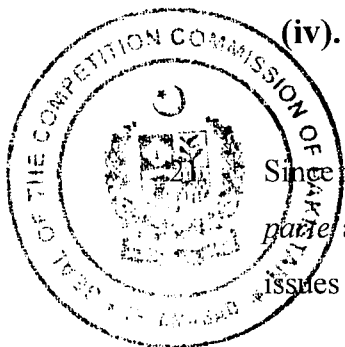
19. Lastly, the Respondents have filed suit in the civil court Rawalpindi, Islamabad and Peshawar, while a revision petition is pending before the High Court. The cases are pending and are sub judice before the civil court as well as before the High Courts. The matter under litigation must be discovered by the Commission instead of proceeding further with it.

ANALYSIS & DECISION

20. Based on the material available on the record i.e. the Enquiry Report, SCN and the written replies filed by the Respondents following issue arise for determination:

- (i). Whether the Complaint is instituted in accordance with the law?**
- (ii). Whether can Commission can proceed in the matter while there is pending civil/criminal litigation between the parties at various forums?**
- (iii). Whether the enquiry committee proceeded with malafide intentions and conclusion of the Enquiry Report is biased?**
- (iv). Whether the Respondent has violated the provisions of Section 10 of the Act?**

Since no one appeared on behalf of the Respondents and the Bench has proceeded *ex-parte* against the Respondents, therefore, we shall now examine the aforementioned issues in light of the material available on the record. In the instant matter, the



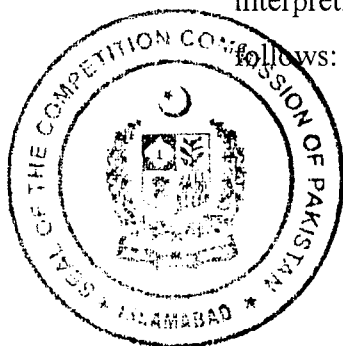
Respondents though have filed written reply to the Show Cause Notice, however, they have deliberately avoided to appear before us and avail the opportunity of hearing given to them under Section 30 of the Act. Despite the foregoing, in line with the dictum of the August Supreme Court of Pakistan in the case **Rehmat Ali vs. Additional District Judge, Multan and others**, reported as **1999 SCMR 900**, wherein it was observed by the August Court that “*decrees granted against the absentees, without consideration of available record or application of mind vis-à-vis the evidence available on the record have always been looked upon with disfavour by the superior courts*”, we deem it appropriate to carry out the analysis of the evidence available on the record in order to reach a just conclusion.

(i). Whether the Complaint is instituted in accordance with the law?

22. The Respondents have made the submission through their written reply that filing/institution of the Complaint is questionable due to the fact that Mr. Bajwa’s Breach of his affidavit as an Advocate. Although the ground raised by the Respondents is not clear, however, given the challenge made to the validity of the complaint under the provisions of the Act, we deem it appropriate to address the issue at hand. The complaint for violation of any provisions of the Act can be filed under Section 37(2) of the Act, which for ease of reference is reproduced herein below:

Section 37(2) where the Commission received from an undertaking or a registered association of consumers in writing of such facts as appear to constitute a contravention of the provision of Chapter II, it shall, unless it is of opinion that the application is frivolous or vexatious or based on insufficient facts, or is not substantiated by prima facie evidence conduct an enquiry into the matter to which the complaint relates.

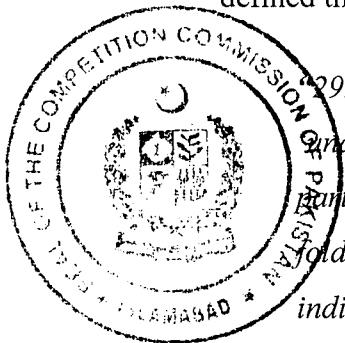
23. The Legal Advisor in attendance referred to the earlier Orders **In the Matter of Show Cause Notice issued to M/s Kamyu.Pk** reported as **2018 CLD 919**, wherein while interpreting the provisions of Section 37(2) and validity of the complaint observed as follows:



10. In the instant matter the proceedings were initiated on a complaint filed by Mr. Umair Ali through email dated 30th April 2015. Further perusal of the contents of the Complaint reveals that the Complainant had approached the Commission as a consumer and not as an undertaking. The competent authority also initiated the enquiry on the aforesaid complaint under Section 37 (2) of the Act. It needs to be appreciated that the Commission is not empowered under Section 37 (2) of the Act to proceed with an enquiry on the complaint of the consumer, rather, the legislature in all its wisdom has categorically outlined that the complaint is to be filed either by the ‘undertaking’ or ‘registered association of consumers’. Before proceeding further it is relevant to refer to the definition of ‘undertaking’ as provided under clause (q) of subsection (1) of Section 2 of the Act, which for ease of reference is reproduced herein below:

(q) “undertaking” means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association or undertakings;

11. The Commission in one of its recent Orders i.e. **Order dated 15th December 2017 in the matter of Show Cause Notice issued to M/s Utility Stores Corporation of Pakistan (Private) Limited** has defined the term ‘undertaking’, in the following manner:



29. *A bare perusal of the definition of an ‘undertaking’ leaves no doubt that it is divided in two parts. The first part of the definition takes within its folds the types of entities that can possibly exist i.e. an individual, a company, a firm, an association of undertakings, governmental entities, sector-regulators, a body corporate established under the*

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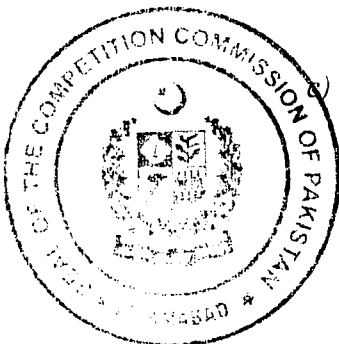
Provincials or the Federal laws of Pakistan, a cooperative society and any other entity regardless of its legal status and the way in which it is financed. Whereas the second part focuses on the nature of activity which is performed by them be it directly or indirectly i.e. production, supply, distribution of goods or provision or control of services. The most important part of the second limb of the definition is that the legislature within its wisdom by using the words 'in any way' (emphasis added), has made it clear that there is no condition on the legal entity to engage in commercial or economic activity to fall within the purview of 'undertaking' for the purposes of the Act. If any legal entity or natural person is engaged in any way in the production, supply, distribution of goods or provision or control of services, the said undertaking would fall within the purview of the term 'undertaking'."

12. We are cognizant of the fact that nowhere in the definition of 'undertaking' the word 'consumer' is used. Upon analysis it is noticed that the term 'consumer' though is not defined under the Act, has been used in various other provisions, the instances are as follows:

a) *In clause (e) of subsection (1) of Section 2 of the Act in the definition of 'dominant position',*

b) *In clause (k) of subsection (1) of Section 2 of the Act in the definition of 'relevant market',*

c) *In clause (b) of subsection (1) of Section 9 of the Act outlining the criteria for grant of exemptions,*

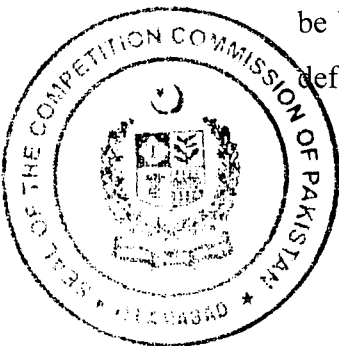


d) In clause (b) of subsection (2) of Section 10 of the Act,
in the instance of deceptive marketing practices.

13. There is no doubt that apart from providing for free competition in all spheres of commercial and economic activity and to enhance economic efficiency, the scope of the Act is also to protect consumers from anti-competitive practices, which *inter alia* include the deceptive marketing practices. Although the term ‘consumer’ is not defined in the Act, however, in other consumer protection laws the term has been defined. It has been held by the August Supreme Court in its judgment reported as *Muhammad Hussain Patel vs. Habib Wali Muhammad, PLD 1981 SC 1*, that definition from other statute can only be borrowed from other statutes where both the statutes are *pari materia*. The question is when statutes are considered *pari materia*, in this regard we draw guidance from the judgment of Honorable Sindh High Court reported as *Murtaza Flour Mills (Private) Limited vs. Federation of Pakistan and others, 1996 MLD 1273*, wherein the Honourable Court has held:

...[s]tatutes in pari materia are statutes which are so related as to form a system or code of legislation and when they relate to same persons or things or to the same class of persons or things or have the same purpose or object it is only then that the statutes are called in pari materia ...

14. Keeping in view the above approach in mind, the consumer protections laws are framed to protect the interests of the consumers. Similarly, the Act also provides for protection of consumers, hence, we are of the considered view that the definition of ‘consumer’ can be borrowed from the consumer protection legislation inforce. The definitions are as follows:



- (i). Subsection (3) of Section 2 of the Islamabad Consumer Protection Act, 1995 has defined the 'consumer' in the following terms:

(3). "consumer" means any person who:

(i) buys goods for a consideration which has been paid or partly paid and partly promised to be paid or under any system of deferred payment or hire purchase and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or

(ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services.

- (ii). Clause (c) of Section 2 of the Punjab Consumer Protection Act, 2005 has defined the consumer in the following terms:

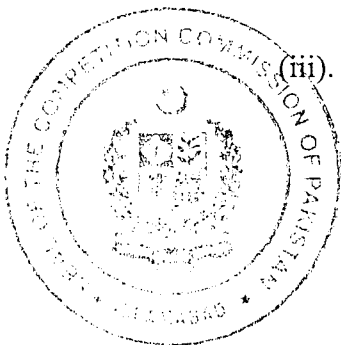
(c) "consumer" means a person or entity who:

(i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose; or

(ii) hires any services for a consideration and includes any beneficiary of such services;

- (iii). Clause (e) of Section 2 of the Sindh Consumer Protection Act, 2014 has defined the consumer in the following terms:

(e) "Consumer" means a person or entity who:



(i) *buys or obtain on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose; or*

(ii) *hires any service for a consideration and includes any beneficiary of such services,*

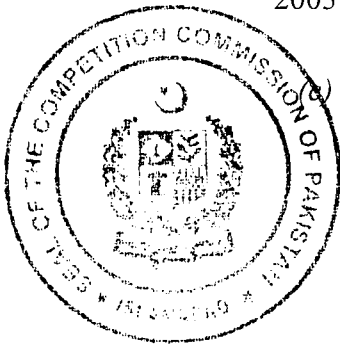
(iv) Clause (c) of Section 2 of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 has defined the consumers in the following terms:

(c) *"Consumer" means any person who:*

(i) *buys goods for a consideration which has been paid or to promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or*

(ii) *hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services.*

(v) Clause (c) of Section 2 of the Balochistan Consumers Protection Act, 2003 has defined the consumer in the following terms:



(c) *"Consumer" means any person who:*

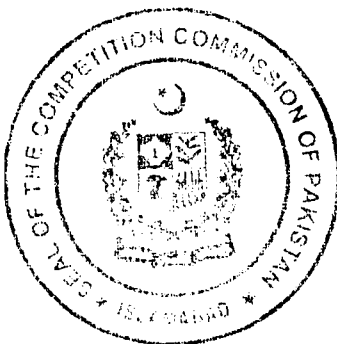
(i) *buys goods for a consideration which has been paid or promised or partly paid and partly promised' to be-paid or under any system of deferred payment including hire. Purchase and leasing and includes any user of such goods but does not include a person*

who obtains such goods for resale or for any commercial purpose; or

(ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services.

15. Bare perusal of the above definitions reveals that there seems to be consensus on the fundamental characteristic of the consumer i.e. **the consumer is user of a good or beneficiary of the services and does not include a person who obtains such goods for resale or for any commercial purpose or is rendering services.** Hence, the legislature in its wisdom has excluded the consumers from any other legal entity which is engaged in provision of goods or services.

16. We have also noticed that in the above referred provision of the Act, in particular, clause (e) of subsection (1) of Section 2, Clause (b) of subsection (1) of Section 9 and clause (b) of subsection (2) of Section 10 of the Act, the legislature has used the word ‘undertaking’ independent of the consumers. The intention of the legislature, thus, can be gathered from the use of words in the statute. The normal presumption would be that every single word has been used in an enactment with a purpose. Hence, different words are used by the legislature to convey a distinct meaning or implication, and must be construed accordingly. Had the intention of the legislature been to use the words ‘undertaking’ and ‘consumer’ interchangeably, the legislature would have only referred to ‘undertaking’ and would have included the term ‘consumer’ in the definition of ‘undertaking’. However, in all its wisdom, which cannot be doubted, the words are used distinctively under the Act and cannot mean one and the same thing. In this regard, we are guided by the judgment of the August Supreme Court reported as **Cooperative Insurance Society of Pakistan Limited vs. State Life Insurance Corporation of Pakistan,**



1999 SCMR 2799, wherein the August Supreme Court, while dealing with the interpretation of two different words in an enactment held that “it is trite law that use of terms/words separately in a provision of the concerned enactment cannot but be given full effect to for the simple reason that redundancy cannot be presumed/countenanced.”

17. It is clear from the facts available on the record that the Complainant was a consumer and the complaint was not filed on behalf of any registered association of the consumers. Since, a consumer does not fall within the purview of the definition of ‘undertaking’, hence, we hereby conclude that the initiation of the enquiry under Section 37(2) of the Act on the basis of the complaint in question was in fact violative of the express provisions of law. We note that for initiation of the enquiry any complaint filed with the Commission must satisfy the criteria laid down in the express provision of law, i.e. it must be filed by an ‘undertaking’ or ‘a registered association of consumers’ and must be substantiated with *prima facie* evidence, failing which no enquiry thereon can be conducted. In this regard reference is made to National Feeds Limited vs Competition Commission of Pakistan, 2016 CLD 1688.

24. In the aforesaid Order Re: Kamyu.Pk the Commission has clarified that who can file a complaint with the Commission under Section 37(2) of the Act. In the instant matter, the complaint was filed under Section 37 (2) of the Act by M/s Dar-e-Arqam Schools (Pvt.) Limited and Dar-e-Arqam Foundation through one of its Director namely Mr. Akhter Bajwa and a Board Resolution as well as the Authority letter in favour of Mr. Akhter Bajwa was filed along with the Complaint. The Respondents have raised no objection on the authorization, rather an allegation has been levelled that Mr. Bajwa being an Advocate cannot do any other business. The Legal Advisor to the Commission has also highlighted that the current proceedings before this Bench pertains to violation of Section 10 of the Act and the Commission and this Bench is not an appropriate authority to take any action against Mr. Bajwa in terms of the Legal Practitioners and Bar Councils Act, 1973.

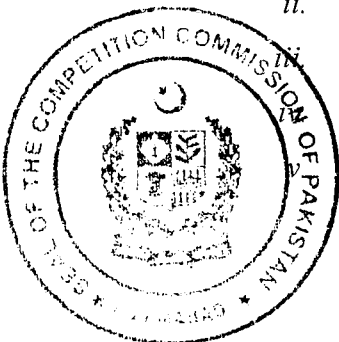


25. After carefully reviewing the merits and the submissions made before us *vis-à-vis* the first issues, we agree with the submissions made by the Legal Advisor in attendance and re-emphasise that for initiation of the enquiry any complaint filed with the Commission must satisfy the criteria laid down in the express provision of law, i.e. it must be filed by an 'undertaking' or 'a registered association of consumers' and must be substantiated with prima facie evidence, failing which no enquiry thereon can be conducted. The instant complaint was filed by the M/s Dar-e-Arqam Schools (Pvt.) Limited and Dar-e-Arqam Foundation are unquestionably an '**undertaking**' in terms of clause (q) of subsection (1) of Section 2 of the Act, through its' duly authorized representative and no objection on the authority so bestowed upon Mr. Bajwa has been called into question. Instead, allegations against Mr. Bajwa has been made for violating the affidavit and the provisions of Legal Practitioners and Bar Councils Act, 1973. We are constrained to hold that the Commission being a creature of law cannot go beyond its mandate. The instant matter pertains to the violation of Section 10 of the Act and the proceedings initiated against the Respondents for violating the provisions of the Act, we during these proceedings are not competent to give any findings for violation of Legal Practitioners and Bar Councils Act, 1973; which in any eventuality is beyond our mandate. Based on the foregoing, we are constrained to turn down the objection raised by the Respondents.

(ii). Whether can Commission can proceed in the matter while there is pending civil/criminal litigation between the parties at various forums?

26. We now proceed to address the issue No. (ii), in the matter based on the record available. There are several ongoing civil suits which primarily tempted the Respondents to raise this objection in the instant proceedings.

- i. Respondent's suit in Rawalpindi,
- ii. Respondent's suit in Peshawar,
Respondent's suit in Islamabad,
Respondent has filed a revision petition before the High Court,
Complainant has filed a suit in the court of Intellectual Property Tribunal.



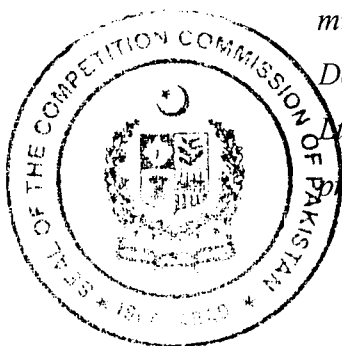
27. Mr. Farooqi while addressing this aspect has placed reliance and referred to an earlier Order passed by the Commission **In the matter of Show Cause Notice issued to M/s Tara Crop Sciences (Private) Limited for deceptive marketing practices**, reported as **2016 CLD 105**, wherein it was observed as follows:

“15. We find this argument to be without merit. Section 10 of the CPC does indeed prohibit the generation of multiple claims pertaining to the same subject matter before different forums, and enunciates the principle of ‘res sub judice’. The purpose behind the provision. As explained through case-law, has been to avoid conflicting judgements and wastage of resources. Section 10 of CPC is however, limited by its language to be of application only to ‘suits’ pending in courts.

16. Section 33 of the Act prescribes the powers of the Commission in relation to its proceedings. The relevant portion is reproduced below for convenience:

Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Pakistan Penal Code, (Act XLV of 1860), and the Commission shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V 011898).

17. The judicial nature of proceedings carried out by the Commission is therefore limited to the situations demarcated above. In all other situations, the Commission performs quasi-judicial functions and may not be deemed a ‘Court’ for the purposes of Section 10 of the CPC. Proceedings before the Commission are therefore not equivalent to suits before a civil court. Furthermore, the settled interpretation of Section 10 of the C.P.C. provides that for the section to be applicable, the two suits must be pending before courts of competent jurisdiction. In Industrial Development Bank of Pakistan vs. Messrs Azeem Food Industries (Pvt.) Ltd. for example, it was held by the Sindh High Court that where proceedings are not in the nature of a civil suit and are instead special


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proceedings provided for under special law, the provisions of Section 10 of the C.P.C. would not be attracted.

28. Mr. Farooqi further submitted that there is no Order staying the proceedings of the Commission, therefore, there is no embargo on the Commission to proceed with the matter. We are in agreement with the submissions made before us in this regard. Further, we also deem it appropriate to highlight the exclusive nature of the prohibitions provided under the Act and the exclusive jurisdiction and power of the Commission in this regard. It is relevant to highlight that the Act was enacted by the Parliament entrusting the Commission with the exclusive statutory mandate **“to provide for free competition in all spheres of commercial and economic activity, to enhance economic efficiency and to protect consumers from anti-competitive behaviours”** (emphasis added). Further, under Section 28 of the Act, in particular clause (a) of sub-section (1) of Section 28 of the Act, is exclusively mandated to initiate proceedings in accordance with the provisions of the Act and to make Orders in cases of contravention of the provisions of the Act. Since, the instant matter pertains to deceptive marketing practices, therefore, we are restricting ourselves to Section 10 of the Act. The provisions of Section 10 of the Act are reproduced herein below for ease of reference:

10. Deceptive marketing practices.— (1) *No undertaking shall enter into deceptive marketing practices.*

(2) *The deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resorts to—*

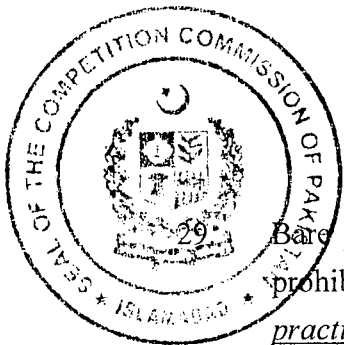
(a) *the distribution of false or misleading information that is capable of harming the business interests of another undertaking;*

(b) *the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;*

(c) *false or misleading comparison of goods in the process of advertising; or*

(d) *fraudulent use of another’s trademark, firm name, or product labeling or packaging.*

Bare perusal of the above provision it is clear that in Section 10(1) of the Act the prohibition is provided i.e. that **no undertaking shall enter into deceptive marketing practices** (emphasis added) and in Section 10(2) of the Act a non-exhaustive list of deceptive marketing practices are provided. We also deem appropriate to refer to the



provisions of non-obstante clause of Section 59 of the Act. For ease of reference the provision in its relevant part is reproduced herein below:

“59. Act to override other laws. — The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.”

30. Bare perusal of the aforesaid reproduced Section 59 of the Act makes it abundantly clear that the provisions and applicability has been given an overriding effect over all other conflicting laws in force. Further, no stay or injunctive order is issued in the matter *vis-à-vis* the proceedings of the Commission. Hence, we are constrained to hold that the instant proceedings shall continue for the purposes of violation of the Act.

(iii). Whether the enquiry committee proceeded with malafide intentions and conclusion of the Enquiry Report is biased?

31. The Respondents have raised the objection in their reply to the SCN that the impartiality of the Enquiry Officers is questionable.
32. Apart from the above, no other *mala fide* has been alleged by the Respondents. It is a settled principle of law that *mala fide* is to be proved through independent and cogent evidence, mere allegation are not sufficient. For the foregoing we place reliance on the case of Zulfiqar Ali vs. Province of Punjab, reported as 2018 PLC (C.S) 842. In addition to the foregoing, we also refer to the case of Shafi Mohammad vs. State, reported as 2017 YLRN 317, wherein it was held that the burden of proof is on the one who alleges *mala fide* on part of Complainant or the investigation agency.
33. It is also relevant to highlight that the legislature has provided for an indemnity under Section 48 of the Act, in order to safeguard the actions of the officers of the Commission. The provision in its relevant parts is reproduced herein below:

48. Indemnity-Subject to sub-section (3) of section 35.no suit, prosecution or other legal proceeding shall lie against the Commission or any Member, officer or servant of the Commission for anything in good faith done or intended to be done under this Act or any regulation or order made thereunder.

Hence, in the light of the aforesaid provision of the Act the Commissions and its officers perform their duties in good faith and any such allegation must be supported with evidence to proof the existence of unfaithful and devious conduct on part of the



enquiry officers. **In the matter of Show Cause Notices issued to Jamshoro Joint Venture Limited & LPG Association of Pakistan**, dated **14 December 2009** (hereinafter the ‘**JJVL Case**’) in particular para 91 of the Order, the Commission held that;

“91. ... [I]n our considered view, in the absence of any relevant, substantial or credible material placed on record, we fail to see any evidence of mala fide or bias perpetrated by any officer of the Commission or the Commission itself in the subject proceedings”.

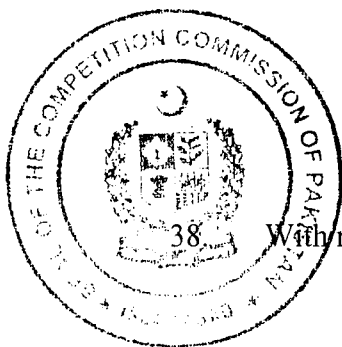
35. This reflects that the Commission practices procedural fairness and any allegation of *mala fide* or bias must be proved with sufficient evidence. The Commission has given equal opportunity to all the parties concerned to present their submission both orally and in writing while adhering to the principles of natural justice and this in no event can be termed as bias or *mala fide*. The allegation raised by the Respondents is thus, discussed and rejected due to insufficient evidence.

(iv). Whether the Respondents have violated the provisions of Section 10 of the Act?

36. The issue in this case is the deceptive use of the Complainant’s registered collective marks by the Respondents and of its project name i.e; Tarbiyah by Respondents without prior authorization. In this context, whether the information that ultimately reached the consumer is false or misleading and has the capacity to harm the business interests of the complainant under section 10(2)(a) and 10(2)(b), respectively and whether the Respondents are fraudulently using Complainant’s trademark under section 10(2)(d).
37. We deem it appropriate to refer to the earlier orders of the Commission pertaining to the analytical scheme of the alleged infringement(s) under Section 10 of the Act. **In the matter of China Mobile Pak Limited and Pakistan Telecom Mobile Limited** reported as **2010 CLD 1478**, the Commission has observed that in determining whether an advertisement or marketing material (and the advertised claims) amount to deceptive marketing practices, the Commission shall:

“...evaluate complete advertisement and make an opinion regarding deception [...] on the basis of net general impression conveyed by them and not an isolated script”.

With regard to “consumers,” the Commission has held that:



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A handwritten signature in black ink, appearing to be a stylized name.

“the term ‘consumer’ under Section 10 of the [Ordinance] is to be construed as an ‘ordinary consumer’ but need not be necessarily be restricted to the end consumer of the goods or services”

39. False and misleading information has been interpreted by the Commission to include:

False information: “oral or written statements or representations that are (a) contrary to the truth or fact and not in accordance with reality or actuality; (b) usually implied either conscious wrong or culpable negligence; (c) has a striker and stronger connotation, and (d) is not readily open to interpretation...”

Misleading information: “may essentially include oral or written statement or representation that are: (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought or judgement (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may not be deliberate or conscious, and (e) in contrast to false information, it has less erroneous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent”.

40. Furthermore, while evaluating the ‘net general impression’ or dominant message, the Commission also delineates and examines express and implied claims contained in an advertisement or promotional campaign while holding the advertiser liable for both. The advertiser is liable for all such claim if they are false and/or misleading or lack a reasonable basis for the same. Neither proof of intent to disseminate a deceptive claim, not evidence that consumers have actually been misled is required for an act or omission to constitute violations under Section 10 of the Act.

41. In the instant matter, although the Respondents have filed a reply to the SCN as stated in the previous section of this order. However, they have not appeared before the us, despite notice and its due receipt, to avail the opportunity of hearing under Section 30 of the Act. However, we deem it appropriate to carry out the analysis of the evidence available on the record in order to reach a just conclusion.



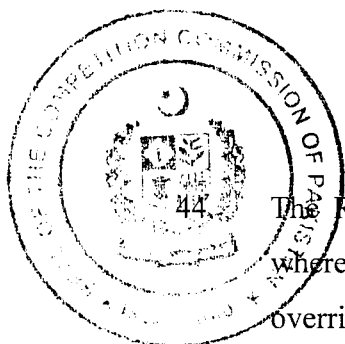
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42. The Complainant has submitted that they have been using “*Dar-e-Arqam*” as a mark, trade mark, service mark and trade name, to distinguish its goods and services. Their trademark is protectable by virtue of the provision of Section 86 of the Trademark Ordinance, 2001. The Complainant has further submitted that it enjoys unparalleled reputation and goodwill in Pakistan as one of the leading education service providers under its trademark and trade name. The Complainant and Respondents have entered into Franchise Agreements which though were valid till 2021. However, in the Complaint itself and in the oral submissions the Complainant has mentioned that they have terminated the agreement. And despite termination, the proof whereof has been submitted by the Complainant, the Respondents continued to utilize, publish, print and sell the trade name, trademark; deceiving the general public. Facilitating the publication and printing in the name of the Complainant. In violation to the Franchise agreement the Respondents changed the syllabus and circular design as well.
43. Although, no oral representation was made by the Respondents, however, in written reply to the SCNs, the Respondents have taken the defence that the agreements are valid till 2021 and the honouring of the arbitration clause in the agreement by the complainant reflects that the agreement is still valid. It is a principle well entrenched in law regarding arbitration clauses, the validity, existence or effectiveness of the arbitration agreement is not dependent upon the effectiveness, existence or validity of the underlying substantive contract unless the parties have agreed to this. This requires us to enter the domain of the very English law principle of “*Doctrine of seperability*”:

“Separability is a legal doctrine that allows an arbitration agreement to be considered entirely separately from the underlying contract in which it is contained. This is important where there are questions about the enforceability of the underlying agreement”.

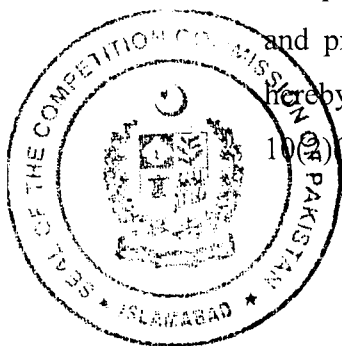
The Respondents, in their written reply have placed reliance on 2013 CLD 1451, wherein it was held that the termination or cancellation of contract would not have an overriding effect in the arbitrations clause, they are completely distinct in nature. Therefore, the franchise agreement though still stands terminated the arbitration clause does not cease to exist. However, apart from the above, no other evidence or


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submissions were placed on record by the Respondent. In this regard, we note that the judgment cited above by the Respondent does not support the case of the Respondents. Because it states that despite termination of the Agreement, the arbitration clause survives and the dispute inter se to be settled through arbitration, which in the instant matter seems to be damages for wrongful termination. The case before us does not pertain to the damages or otherwise, the case before us is with reference to the deceptive marketing practices by the Respondents i.e. use of mark, tradename, trademarks and other copyright material after the termination of the Agreement, without any lawful authorization.

45. Perusal of the evidence available on the record and duly recorded in the Enquiry Report, it is clear that the Respondents are using the trademark and tradename of the Complainant. The Complainant has produced the trademarks registration certificate, whereas the Respondents have not produced any document in its support which justify the use of the Complainant's trademark and trade name. It is clear from the above evidence that the Respondents are blatantly using the Complainant's registered trade/service mark '*Dar-e-Arqam Schools*' without obtaining due authorization from the Complainant to thrive on the reputation built by the Complainant over a period of several years. The only defence which has been made by the Respondents during the enquiry is that there was a Franchise Agreement that allowed them to use the trade name and trademark of the Complainant. However, it is not disputed at all by either party that the agreement stands terminated. The only ground which has been advanced by the Respondents is that through the arbitration clause the agreement survived. This understanding of the Respondents is not correct and has been duly rebutted in preceding paragraph.

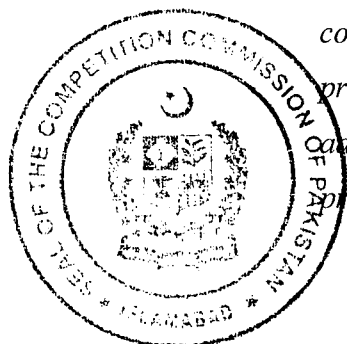
46. While reviewing the marketing material of the Respondent available on the record and duly acknowledged in the enquiry report as evidence against the Respondent, we are of the considered opinion that the Respondent is using misleading information by using deceptively similar logo and wording to that of the Complainant's registered trademark and project. *Dar-e-Arqam School and Tarbiyah School International*. Hence, we hereby conclude that the Respondents have violated Section 10(1) read with Section 10(3)(b) of the Act.



47. At this juncture, we deem it appropriate to refer to one of our earlier orders **In the matter of Show Cause Notice issued for violation of DHL Trademark reported as 2013 CLD 1014**, wherein *vis-à-vis* the goodwill and the value of trademark has been acknowledged in the following words:

...[i]t is important to recognize that part of any business's identity is the goodwill it has established with consumers, while part of a product's identity is the reputation it has earned for quality and value. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. This enables people with skill and enterprise to produce and market goods and services in fair conditions, thereby facilitating international trade.

*We also would like to refer to the judgments of **Hoffmann-La Roche [1978] E.C.R. 1139**, para.7, and **Philips Electronics NV v Remington Consumer Products Ltd [2002] ECR 1-0000**; wherein it was held that "the essential function of a trademark is to guarantee the identity of origin of the marked goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin. For the trade mark to be able to fulfil its essential role in the system of undistorted competition, it must offer a guarantee that all the goods or services bearing it have been manufactured or supplied under the control of a single undertaking which is responsible for their quality". It is also pertinent to high light that in the judgments of **Arsenal Football Club v. Matthew Reed [2003] RPC 9** and **Loendersloot [1997] E.C.R. I-6227** it was observed that "for that guarantee of origin, which constitutes the essential function of a trade mark, to be ensured, the proprietor must be protected against competitors wishing to take unfair advantage of the status and reputation of the trade mark by selling products illegally bearing it."*



48. An examination of the boards and textbooks of the Respondents' owned institutions and the marketing material as highlighted and referred in the Enquiry Report in comparison with the trademark of the Complainant, it is clear that the Respondents are using the word '*Dar-e-eArqam*'. The fact that Respondents have adopted a trademark design which is obviously similar to that of the Complainant's trademark; makes it further clear that the Respondent is attempting to mislead consumers into making an impulsive decision into getting an admission to their educational institutes and buying its product i.e. books and uniforms which looks identical to that of the Complainant and can be conveniently assumed by the consumers to be that of the Complainant.

49. It is also relevant to highlight that though the Respondents were given a number of opportunities to rebut the *prima facie* findings and the evidence available on the record, which has also been highlighted and reviewed by us, for violation of Section 10 of the Act, however, the Respondents deliberately refused to appear and avail the opportunity of hearing and present facts and material in support of its contentions or even rebut the evidence evaluated and available on the record. They have solely relied on the presence of the terminated franchise agreement, and mala fide on part of the Complainant (which has little to do with the merits of the enquiry) and grievances amongst the parties. Therefore, we were left with no other option but to proceed *ex-parte* against the Respondent and also to reply on the *ex-parte* proof and submissions made before it by the Complainant. In this regard reference is made to the **Matter of China Mobile Pak Limited and Pakistan Telecom Mobile Limited** reported as **2010 CLD 1478**, wherein it was held by the Commission that "*the onus to prove is on the undertaking against whom deceptive marketing practices is alleged, as the object and purpose of the Act is to protect the consumer*". Therefore, the onus to rebut the presumption of violation of the Act was on the Respondent. However, the Respondent did not provide any justification for resorting to the marketing practices under question. A similar view was also taken by the Commission in another order i.e. **In the matter of Show Cause**

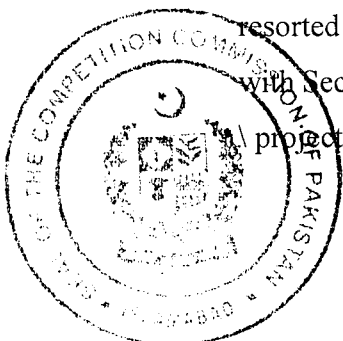
Notice issued to M/s Vision Developers reported as **2018 CLD 350**.

We also deem it appropriate to refer to one of Commission's earlier order **In the matter of Show Cause Notice issued for violation of DHL Trademark reported as 2013 CLD 1014**, wherein it was held as follows:



“52. As for the fraudulent use of Complainant’s trademark, we are aware that there is no definition of the term “fraudulent” or “fraud” in the Act nor can one perhaps attempt to give one single definition. However, while interpreting Section 10 of the Act; one needs to be conscious that the interpretation of fraudulent use of trade mark has to be in the context of deceptive marketing and would thus have a broader scope. Rather than making it too complex by focusing on subjective “intentions” of the Respondents, in our considered view, it is best if we adopt simplistic approach i.e. if it can be demonstrated that the Respondents by use of the trade mark, intended to deceive the customer/consumer to gain an advantage. Keeping in view the nature of contravention, it is not the subjective intent but the objective manifestation of that intent that will establish the fraudulent use. In the US, in actual practice the courts look at the surrounding facts and circumstances in relation to misrepresentation and apply the elements strictly and leniently as believed and warranted by the courts. In the present case, there can be little doubt that the Respondents knew or should have known that the representation i.e. use of Complainant’s trademarks was indeed unauthorized and hence false - in that, the result of misrepresentation gave the Respondents a benefit and an advantage that they would not otherwise have obtained. Also, the result was intended and anticipated (whether nefarious or not) such a conduct/practice in our considered view would be termed as fraudulent in terms of clause (d) read with sub-section (2) of Section 10 of the Act...”

51. Based on the above, we are of the considered opinion that the Respondent’s representations, omission or practices for the purposes of advertisement and promotion of its school project are highly likely to mislead actual or potential consumers under the circumstances. Accordingly, we are constrained to conclude that the Respondent has resorted to deceptive marketing practices in violation of Section 10(2)(b) & (d) read with Section 10(1) of the Act in relation to its advertising and marketing campaign viz., project in Islamabad, Rawalpindi and Peshawar , as discussed above.



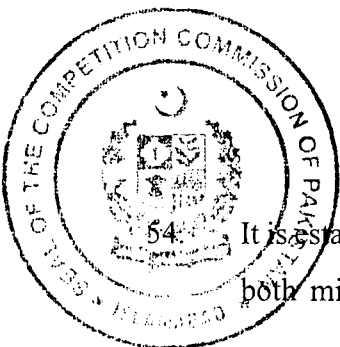
52. Foregoing in view, we cannot ignore the capability of the misleading or false campaign to harm the business interest of another undertaking in previous orders of the Commission, for instance, **In the matter of Show Cause Notice to M/s Tara Crops Sciences (Private) Limited** reported as **2016 CLD 105**, the Commission has deliberated on to what shall be deemed to constitute “*business interests of another undertaking*”. Para 23 of the aforesaid Order reads:

“Business interest, not being term of art, has not been defined exhaustively, either in the [Competition] Act, or in any of the previous orders of the Commission. The Commission has, however, in its Order in the matter of Show Cause Notice issued to M/s Jotun Private Limited for Deceptive Marketing Practices (‘Jotun Order’), briefly touched upon a definition of the term by considering the ‘image, goodwill and sales’ of an undertaking as its business interests. The concept of ‘good will’ had previously also been discussed by the Commission in its Order in the Matter of Complaint filed by M/s DHL Pakistan (Private) Limited (‘DHL Order’), wherein it was stated that ‘it is important to recognize that part of any business identity is the goodwill it has established with consumers, while part of a product’s identity is the reputation it has earned for quality and value’.”

53. Furthermore, in regard to harm to business interests of the competing undertakings, the Commission has, **In the matter of show cause notice issued to M/s Jotun Pakistan (Pvt.) Limited**, reported as **2015 CLD 1638**, observed that:

“14. [...] to prove conduct under Section 10(2)(a) of the [Competition] Act, it is not necessary to show actual harm to competitors. It is sufficient to show the existence of a deceptive marketing practice that has the potential to harm the business interest of the competitor. Among such deceptive marketing practices is the distribution of claim lacking reasonable basis that is essentially designed and used to gain an unfair advantage over competitor”.

54. It is established above that the Respondent advertising and marketing campaign contain both misleading claims which lack reasonable basis, as well as impinges upon the



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intellectual property rights of the Complainant viz., the registered trademark. We have no doubt in holding that the unsubstantiated claims of the Respondent have potential of creating unfairly, a positive/material perception on the part of actual or potential consumers in favour of the Respondent, which, in turn, is capable of harming the image, goodwill, sales and other business interests of another undertaking(s), specifically, the competitors, in violation of Section 10(2)(a) read with Section 10(1) of the Act.

REMEDIES AND PENALTY

55. For the reasons discussed above and in line with our mandate to protect the consumers from anti-competitive behavior, including deceptive marketing practices, we hereby hold the subject conduct of the Respondent clearly in violation of Section 10(1) of the Act.
56. In deciding the quantum of penalty, we have taken into account the aspect of seriousness of the violation and all other relevant factors, including, the conduct of the Respondent. We are conscious of the fact that education is an important aspect that plays a huge role in the modern, industrialized world. People need a high level of education to have a better life in the future. Without education, humans would not be rational to be able to differentiate between the rights and wrongs. It is through education, a nation is then being able to achieve growth and development. A refined education sector moulds the future of the nation. This sector can provide our children with a balanced and well-rounded education, develop them to their full potential, and nurture them into good citizens, conscious of their responsibilities to family, society and country. Therefore, education carries greater importance than ever in today's society. It does not only allow people to read or write it also offers them the opportunity to have a good life, communicate better, develop new technologies and support the economy.
57. We are conscious of the fact, that many parents would enrol their children in the Respondent's institution knowing that they are being admitted to the institutions owned and managed by the Complainant. Unfortunately, the reality is made known to them at a much later stage, when they are in the middle of their educational year. At that time it is too late for any parent to change the educational institution/school. Foregoing,



in view, we are of the firm opinion that the Respondents cannot be left scot-free and must be dealt with under Section 38 of the Act.

58. As noted in the preceding paragraphs, it is established that the Respondents have engaged in deceptive marketing practices prohibited under Section 10(2) (a), (b) & (d) read with Section 10(1) of the Act. Therefore, for reasons mentioned in preceding paragraph we deem it appropriate to impose a penalty in the amount of PKR 5,000,000 (Rupees Five Million Only) on the proprietor of the Respondent institutions, collectively. In addition to the foregoing, we cannot ignore the fact, which though is discussed in Paras 6 & 7 above, however, we deems it appropriate to refer to it again that the Respondents from the first date showed reluctance in making submissions before us and got an adjournment on one pretext or the other. On the first date of hearing, despite receipt of notice much in advance, an adjournment was requested to file written reply. On the second hearing, i.e. 03rd April 2019, the authorized representative again requested for adjournment. Subsequently hearing was scheduled for 22nd April 2019 and on the said date, despite service and receipt of the notice neither anyone appeared on behalf of the Respondents nor was any written request made on their behalf or by them. Therefore, we decided to proceed *ex-parte* against the Respondents on 22nd April 2019 in accordance with provision to sub-section (2) of Section 30 of the Act read with clause (e) of sub-regulation (2) of Regulation 26 of the in the matter pursuant to Regulation 26(2)(e) of Competition Commission (General Enforcement) Regulations, 2007. The foregoing attitude of delaying tactics falls squarely within the purview of clause (e) of subsection (2) of Section 38 of the Act i.e. knowingly abusing, impeding and obstructing the process of the Commission to conclude the proceedings. Accordingly, in pursuance of clause (c) of subsection (2) of Section 38 of the Act, we are constrained to impose a further penalty of PKR 500,000/- (Rupees Five Hundred Thousand Only) on the proprietor of the Respondents for knowingly abusing, impeding and obstructing the proceedings before us. The proprietor of the Respondent Institutions are directed to deposit the imposed penalty with the Registrar of the Commission, within sixty (60) days from the date of receipt of this order.

The Proprietor of the Respondent Institutions is also directed to publish in atleast two national daily newspapers that they have no affiliation or association with the



Complainant within sixty (60) days from the date of receipt of this Order and to refrain from indulging in any form of deceptive marketing practices in the future and is forewarned that repeat violations may attract further stricter penalties as per the law.

60. In terms of the above, the SCN is hereby disposed of.

M. Jaleel

Dr. Muhammad Saleem
Member

HA Ansari

Dr. Shahzad Ansar
Member



Islamabad the 8th day of August, 2019